

History of the New Mexico Cigarette Tax

1. The NM Cigarette Tax is on "the privilege of selling, giving or consuming cigarettes in New Mexico." That language has defined the tax for at least 40 years.
2. The taxpayers are companies that have a Cigarette Distributor License issued by NMTRD. The licensed Distributors buy Tax Stamps from NMTRD and affix them to packages of cigarettes sold to retailers.
3. Retailers and consumers of cigarettes have no obligation under the Cigarette Tax Act to pay the tax to NMTRD. They cannot buy Tax Stamps from NMTRD.
4. Before 1992 tribal retailers bought their cigarettes from out-of-state suppliers who did not have a NM Cigarette Distributor License and did not buy NM Tax Stamps or put them on the packages of cigarettes.
5. Tribal retailers sold cigarettes without a NM Tax Stamp to both members and non-members of the tribe. Some tribes imposed their own cigarette tax, and others did not.
6. NMTRD's official policy in the 1970s was not to impose the NM Cigarette Tax on sales by tribal retailers on tribal land, whether the customer was a member or non-member of the tribe.
7. In 1981 NMTRD asked the Legislature to amend the Cigarette Tax Act to make the consumer of cigarettes the taxpayer. This proposal was intended to authorize NMTRD to require tribal retailers to collect the state tax from customers who are non-members of the tribe. The Legislature did not adopt the bill requested by NMTRD.
8. After 1981 tribal retailers continued to buy cigarettes without a NM Tax Stamp from out-of-state suppliers, and continued to sell them to members and non-members of the tribe.
9. In 1992 the Legislature amended the Cigarette Tax Act to state that sales to tribal retailers are exempt from the state tax. Therefore, licensed NM Distributors could legally sell cigarettes to tribes without a NM Tax Stamp. (At this time, tax-exempt cigarettes did not have any NM stamp on the package.) After 1992 tribal retailers bought un-stamped, tax-exempt cigarettes from licensed NM Distributors, and sold them to both member and non-member customers without the state tax.

History of NM Cigarette Tax, page 2

10. In 2006 the Legislature amended the Cigarette Tax Act to require Distributors to put a Tax-Exempt Stamp on cigarettes that are exempt from the state tax. Cigarettes a licensed Distributor sold to tribal retailers continued to be tax-exempt, but the Distributor put a Tax-Exempt Stamp on the packages. Tribal retailers continued to sell those cigarettes to all their customers exempt from the state tax.
11. In 2010 the Legislature amended the Cigarette Tax Act to increase the state tax from \$0.91 to \$1.66 per pack, and to create a new stamp – the Tax Credit Stamp – for sales by licensed NM Distributors to tribal retailers. The Tax Credit Stamp documents that the tribe has imposed a cigarette tax of at least \$0.75 per pack, and the cigarettes are exempt from the state tax.
12. The current version of the tribal retailer exemption states: “Exempted from the cigarette tax are sales of cigarettes: ... to a tribe, or to a tribal member licensed by the governing body of a tribe for use or sale on that tribe’s land, if the tribe has in place a qualifying tribal cigarette tax.”
 - a. The exemption does not refer to the member or non-member status of the retail customer of the cigarettes.
 - b. Tribal retailers can sell cigarettes with a NM Tax Credit Stamp to all of their retail customers, both members and non-members of the tribe, exempt from the state tax.
 - c. The exemption applies to all cigarettes sold by a Distributor to a tribal retailer for use (by anyone) on the tribe’s land, or resale (to anyone) on the tribe’s land – if the tribe imposes a cigarette tax of at least \$0.75 per pack.
 - d. The exemption does not apply to cigarettes the tribal retailer sells for resale outside of tribal land.